

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARYE SACHS,

Plaintiff,

-against-

JEROME NUNZIANTE,

Defendant.
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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 24 2016 ★

LONG ISLAND OFFICE
ORDER
15-CV-1825 (JFB)(AKT)

JOSEPH F. BIANCO, District Judge:


Before the Court is a Report and Recommendation ("R&R") from Magistrate Judge Tomlinson recommending that the Court award plaintiff the following as damages: (1) \$60 for early termination of plaintiff's use and occupancy of the rented room; (2) \$3,000 in emotional distress damages; and (3) \$3,000 in punitive damages. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (*See* R&R, dated July 21, 2016, at 19-20.) The date for filing any objections has since expired, and neither party has filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety, and awards plaintiff \$6,060 in damages.

Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) and

Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas*, 474 U.S. at 155)).

Although both parties have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly, IT IS HEREBY ORDERED that plaintiff is awarded the following in damages: (1) \$60 for early termination of plaintiff’s use and occupancy of the rented room; (2) \$3,000 in emotional distress damages; and (3) \$3,000 in punitive damages.

SO ORDERED.


Joseph F. Bianco
United States District Judge

Dated: August 24, 2016
Central Islip, New York